



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr Lee Mullins

v

Harrow Unison LG

PRELIMINARY HEARING

Heard at: Watford (in person)

On: 22 March 2023

Before: Employment Judge Bedeau

Appearances:

For the Claimant: Din not attend, nor represented

For the Respondents: Ms M Stanley, Counsel

JUDGMENT

All claims against the respondent are dismissed under rule 47 Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

REASONS

1. The claimant works for London Borough of Harrow as a Handyperson. In his claim form presented to the tribunal on 15 August 2022, he made unparticularised claims of race and sex discrimination, as well as professional negligence against several Unison officials in the way they dealt with the restructure of his employer's Environment and Culture and Commissioning and Commercial Services-Division Directorates. His position has not been removed and he remains employed as a Handyperson.
2. In the response presented to the tribunal on 23 September 2022, it is averred that the Tribunal does not have jurisdiction to hear and determine the professional negligence claim; that the claimant became a member of the union, Unison in 2003; the claims are scandalous, vexatious and have no reasonable prospect of success and should be struck out; they are not particularised, and are denied in any event.

3. On 19 November 2022, the Tribunal wrote to the parties, informing them that the case will be listed for a preliminary hearing today, in public, for the Judge to:
“To consider strike out on grounds that the claims have no reasonable prospect of success.”
4. In an email dated 14 March 2023, sent to the Tribunal and the respondent’s representatives, the claimant applied for the hearing to be postponed as he was “currently in extreme discomfort and house bound.” He stated that an NHS nurse would be visiting him at his home, all day, to conduct an assessment, and to change his medication. He then wrote:
“I will be unavailable to participate on 24 May 2023 at 2pm.”
5. It is clear from this that he had the wrong date in mind as the Notice of Hearing listed the case to be heard on 22 March 2023 at 10.00am.
6. In the respondent’s representatives’ email, dated 14 March 2023, it opposed the postponement application, taking the view that the claimant had not provided any evidence of the appointment and that the respondent will suffer prejudice in not having its strike out application heard at the earliest opportunity as the claims are scandalous, vexatious and have no reasonable prospect of success. If the correct date of the claimant’s appointment is on 22 March 2023 at 2pm, it is still possible to have a video hearing in the morning at 10am.
7. The claimant emailed the Tribunal and the respondent’s representatives stating:
“At present I am unable to attend the hearing whereby I have sent the reasons why I am unable to attend for serious medical health issues. In addition is that the document I will submit is a restructure document whereby, it will demonstrate that a lack of reasonable HR comprehension was applied by Unison at my serious detriment.”
8. Regional Employment Judge Foxwell, on 16 March 2023, refused the claimant’s postponement application. The Judge wrote:
“The claimant’s application is refused as it is unsupported by medical evidence.”
9. The refusal was sent to the parties on 16 March.
10. The claimant did not attend the hearing today and did not send to the Tribunal medical evidence explaining his absence. The Clerk to the Tribunal spoke to him at or around 10.00am this morning and he confirmed that he would not be attending and that he did not understand how to participate by Cloud Video Platform. It was put to him that another option would be that he participates by telephone. At that point he said that he would need to speak to his representative, but in any event, he would be unable to participate in this hearing today.
11. There is nothing in the case file stating that the claimant is represented.
12. Ms M Stanley, Counsel for the respondent, intended to apply for a strike out judgment, but was content for the claims to be dismissed under rule 47, Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 based on the claimant’s non-attendance.

The law

13. Rule 47 states:

“If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall

consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence.”

Conclusion

- 14. I was satisfied that the claimant failed to engage in these proceedings. He was made aware from the respondent's representatives' response to his application, that he needed to support it by medical evidence of his unfitness to attend the hearing. This was again reinforced by the Regional Employment Judge, yet no medical evidence was submitted.
- 15. It is unclear whether the nurse had an appointment with him on 22 March 2023. There is no evidence of this.
- 16. Apart from the claim form and the above emails, there is nothing of much assistance to the claimant. The respondent is anxious for a resolution to its strike out application and the claimant has failed to either attend in person, or to participate by either video or telephone.
- 17. Having considered all the information before me, I have come to the conclusion that all claims against the respondent in these proceedings should be dismissed.

Employment Judge Bedeau

22 March 2023

.....
Sent to the parties on:

31 March 2023
.....

For the Tribunal:

T Cadman
.....